



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Carl E. Whitcomb

Serial No.:

Filed: October 29, 2001

For: Root Growth Barrier

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Group Art Unit:

Examiner: Unknown

PETITION FOR FILING DATE

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U. S. Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date below:	
<u>3-7-2002</u> Date	<u><i>Jeffrey L. Smith</i></u> Signature

*Receipt date
granted
is
10/29/01.
J. Chang
from OPLA*

PETITION FOR A FILING DATE PURSUANT TO 37 CFR 1.10(e)

Applicant submitted a new patent application by Express Mail Post Office to Addressee, pursuant to the requirements of 37 CFR 1.10(a), on October 29, 2001, Express Mail Certificate Number EL 833794866 US. The PTO has not returned the postcard that was enclosed with the new application. Therefore, pursuant to 37 CFR 1.10(e), Applicant hereby submits a duplicate application and respectfully requests that this duplicate application be accorded a filing date of October 29, 2001.

DISCUSSION

The application that Applicant submitted to the PTO on October 29, 2001 has apparently been lost in the mail. Applicant mailed the application, consisting of the specification, 65 claims, and 2 sheets of formal drawings, along with a new application transmittal and a stamped self-addressed postcard that would serve as the notification of receipt by the PTO.

The postcard has not been returned, thereby signifying that the application has been lost. Therefore, pursuant to 37 CFR 1.10(e), applicant files this petition and a duplicate copy of the application, respectfully requesting a filing date for this application of October 29, 2001.

37 CFR 1.10(e) states:

(e) Any person mailing correspondence addressed as set out in § 1.10(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally filed deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested ...; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

It should be noted that the USPTO has *sua sponte* waived the requirement of 37 CFR 1.10(e)(1) for petitions filed before May 2002, for applications mailed on or after October 13, 2001 and no later than December 1, 2001. Since the application that is the subject of this petition was mailed on October 29, 2001, the subject application falls within this applicable time frame.

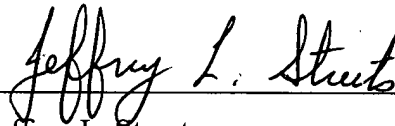
As may be seen on the enclosed papers, the number of the "Express Mail" mailing label was attached to the application, to the Transmittal, and to the postcard.

This petition includes a copy of the originally filed application, the Transmittal, the postcard, each showing the mailing label number thereon, and a copy of the Express Mail

Mailing label that shows the date in of 10-29-01 as well as showing a post office stamp date of October 29, 2001.

The undersigned attorney hereby states that I personally deposited the application, transmittal, and postcard receipt that are the subject of this petition, with the United States Postal Service as Express Mail Number EL833794866US, in an envelope addressed to the Assistant Commissioner of Patents, Washington, D.C, on October 29, 2001. I further state that I have examined the papers enclosed with this petition and state that they are true copies of the originally mailed correspondence and mailing label.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jeffrey L. Streets", is written over a horizontal line.

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